

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Performance Measurements and Standards for)	
Unbundled Network Elements and)	CC Docket No. 01-318
Interconnection)	
)	
Performance Measurements and Reporting)	
Requirements for Operations Support)	CC Docket No. 98-56
Systems, Interconnection, and Operator)	
Services and Directory Assistance)	
)	
Deployment of Wireline Services Offering)	CC Docket No. 98-147
Advanced Telecommunications Capability)	
)	
Petition of Association for Local)	CC Docket Nos. 98-147, 96-98, 98-141
Telecommunications Services for Declaratory)	
Ruling)	

COMMENTS OF AT&T WIRELESS SERVICES, INC.

AT&T Wireless Services, Inc. (“AWS”) files these comments in response to the Commission’s Notice of Proposed Rulemaking relating to performance measurements and standards for evaluating incumbent local exchange carrier (“LEC”) performance in the provisioning of unbundled network elements and interconnection facilities.^{1/}

I. INTRODUCTION

Commercial mobile radio service (“CMRS”) carriers should be full participants in any performance plan adopted for interconnection trunks, collocation and UNEs.

Incumbent LECs are required to provide interconnection to CMRS carriers consistent

^{1/} Performance Measurements and Standards for Unbundled Network Elements and Interconnection, et al., CC Docket No. 01-318, Notice of Proposed Rulemaking, FCC 01-331 (rel. Nov. 19, 2001) (“UNE Measurements Notice” or “Notice”).

with the nondiscrimination requirements of sections 251 and 252 of the 1996 Telecommunications Act. The Commission contemplated that all interconnection with incumbent LECs, whether by CMRS carriers or competitive local exchange carriers, should fall within the umbrella of section 251 in order to foster regulatory parity and consistent application of the statute and the Commission's regulations. Therefore, performance plans designed to ensure nondiscriminatory access to interconnection, including enforcement mechanisms to compensate carriers that receive substandard performance, must include CMRS interconnection.

CMRS carriers are also entitled to obtain unbundled network elements ("UNEs") pursuant to section 251(c)(3) of the 1996 Act. The Commission has requested further comment on CMRS carrier access to UNEs, particularly to interoffice transport, as part of its triennial review of UNE rules and regulations.^{2/} AWS respectfully requests that the Commission affirm that performance standards and enforcement mechanisms intended to ensure nondiscriminatory access to UNEs apply when CMRS carriers obtain UNEs.

I. PERFORMANCE REQUIREMENTS MUST FULLY APPLY TO INTERCONNECTION PROVIDED TO CMRS CARRIERS.

In this proceeding, the Commission seeks comment on whether it should adopt performance measurements and standards for various facilities utilized as inputs by other carriers in the provision of their service, including collocation and interconnection trunks.^{3/} The Commission notes that performance measurements and standards may be

^{2/} Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Notice of Proposed Rulemaking, FCC 01-361 (rel. Dec. 20, 2001) ("Triennial Review"). The Commission incorporated into the triennial review a petition filed by AWS and VoiceStream seeking a declaratory ruling affirming CMRS carriers' rights to obtain unbundled dedicated transport. Id. at ¶ 12 (citing Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Petition for Declaratory Ruling (filed by AWS and VoiceStream Nov. 19, 2001) ("AWS/VoiceStream UNE Petition")).

^{3/} UNE Measurements Notice ¶¶ 1-2.

used to ensure that incumbent LECs provide to requesting telecommunications carriers nondiscriminatory access to interconnection and collocation consistent with the duties set forth in section 251 of the Telecommunications Act of 1996.^{4/} AWS requests that the regulatory requirements adopted in this proceeding concerning incumbent LEC performance in the provisioning of collocation and interconnection trunks fully apply to CMRS carriers.

The duty of incumbent LECs to provide interconnection on a nondiscriminatory basis pursuant to sections 251(c) and 252 applies to CMRS interconnection. As the Commission declared in the *First Local Competition Order*, because CMRS carriers are telecommunications carriers that provide telephone exchange service and exchange access, incumbent LECs must “make interconnection available to these CMRS providers in conformity with the terms of sections 251(c) and 252, including rates, terms, and conditions that are just, reasonable and nondiscriminatory.”^{5/} The Commission also determined that including CMRS interconnection within the ambit of sections 251 and 252 would “foster regulatory parity in that these provisions establish a uniform regulatory scheme governing interconnection between incumbent LECs *and all requesting carriers, including CMRS providers.*”^{6/} By including all interconnection within the section 251

^{4/} UNE Measurements Notice ¶ 14.

^{5/} Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499, 15998-99, ¶ 1012 (1996) (“First Local Competition Order”), subsequent history omitted. Section 251(c)(2) by its terms is not limited to CLECs. It establishes a “duty to provide, for the facilities and equipment *of any requesting telecommunications carrier*, interconnection with the local exchange carrier’s network.” 47 U.S.C. § 251(c)(2) (emphasis added). Moreover, the interconnection must be “at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, *or any other party to which the carrier provides interconnection.*” 47 U.S.C. § 251(c)(2)(C) (emphasis added). Thus, the interconnection that incumbent LECs provide to CMRS carriers must be equal to that provided by the incumbent LEC to itself or to CLECs. The only limitation in section 251(c) is that the interconnection must be for “transmission and routing of telephone exchange service and exchange access.” As noted above, the Commission found that this limitation did not exclude CMRS carriers because they provide telephone exchange service and exchange access.

^{6/} First Local Competition Order, 11 FCC Rcd at 16005, ¶ 1024. (emphasis added).

umbrella, the Commission intended that interconnection issues for CMRS carriers and other carriers be resolved in a consistent fashion.^{7/}

Thus, under the Commission's rules, the incumbent LECs' duty to provide nondiscriminatory interconnection consistent with sections 251 and 252 of the 1996 Act applies not only to CLECS, but to CMRS carriers as well. Performance metrics designed to ensure that incumbent LECs comply with their statutory duties to provide nondiscriminatory interconnection pursuant to section 251(c)(2) and 252 should, therefore, apply equally to CMRS interconnection.

Unfortunately, the "regulatory parity" that the Commission intended to foster by including all interconnection under a single regulatory regime has not occurred. The Commission notes that states have adopted extensive performance measurements, standards and enforcement plans to capture incumbent LECs' performance in provisioning interconnection trunks and collocation.^{8/} CMRS carriers such as AWS, however, have not been included in such plans.^{9/} These state plans typically contain detailed measurements, standards, and reporting requirements. With respect to interconnection, states have developed standards for ordering and provisioning, such as the timeliness of FOC response to ASRs, installation intervals for interconnection trunks or collocation, and trunk blockage. The state plans also typically include an enforcement

^{7/} Id. As a result of the Commission's determination that LEC/CMRS interconnection is governed by sections 251 and 252, AWS and other CMRS carriers have negotiated or arbitrated interconnection agreements with incumbent LECs pursuant to section 252. Like CLECs, these interconnection agreements set forth the basic parameters for the physical interconnection of CMRS and incumbent LEC networks, and establish the compensation for the exchange of traffic.

^{8/} Notice ¶ 15.

^{9/} For example, AWS sought to file comments and participate in the development of California's performance plan. An ALJ ruled that AWS could not participate, and that the performance metrics did not apply to wireless carriers. Similarly, in Texas, AWS requested the state commission to formally indicate that performance metrics extend to all telecommunications carriers, including CMRS carriers.

mechanism, which entails payments to affected carriers in the form of self-executing bill credits when the incumbent fails to meet the requisite performance standards. States have not extended the protections afforded by these types of performance plans and payment mechanisms to CMRS carriers.

The Commission should rectify this failure by establishing policies and rules that ensure that provision of interconnection trunks and collocation to CMRS carriers is subject to the same performance standards available to CLECs, and that CMRS carriers receive the same remedies as CLECs when incumbent LECs fall short of the standards.

AWS recognizes that the state performance plans have helped foster competition, and that CLECs may well support the continuation of those programs. AWS does not seek to supplant or preempt these plans. The Commission should affirm that state-developed performance metrics designed to capture incumbent LEC performance in the provision of interconnection facilities should include CMRS carriers. Additionally, should the Commission adopt performance metrics to supplement state plans, AWS urges the Commission expressly to include CMRS carriers.

The measurements and standards need not be any different from those applicable to other competitive carriers that obtain interconnection trunks and collocation facilities from the incumbent LECs. Some adjustment, however, will be necessary to the reporting dimensions to take into account CMRS participation. The reporting dimensions should be adjusted to ensure that incumbent LECs performance reporting includes the provision of interconnection trunks and collocation to CMRS carriers unaffiliated with the incumbent LEC. Additionally, the incumbent LECs' performance in providing

Unfortunately, the state has not included CMRS carriers in the state performance plan even though AWS continues to believe the metrics should apply to it.

interconnection trunks and collocation to any of its affiliated CMRS providers should also be reported. Performance in providing interconnection for affiliated CMRS carriers should either be included in the reporting for all incumbent LEC affiliates in the aggregate, or reporting for incumbent LEC affiliated CMRS carriers could be separately reported and disaggregated from other incumbent LEC affiliates.

Tracking performance for CMRS carriers should not appreciably increase incumbent LEC reporting requirements. Some incumbents already provide some level of reporting for interconnection trunks provided to CMRS carriers. Qwest, for example, provides AWS with monthly reports, by state, of timeliness of trunk installation, blocking and mean time to repair.^{10/} Whatever incremental reporting may be required by including CMRS carriers in the performance requirements for interconnection trunks and collocation are vastly outweighed by the benefit of ensuring nondiscriminatory treatment and regulatory parity.

Finally, a plan should include the ability of CMRS carriers to obtain self-executing credits when the incumbent LEC fails to meet performance standards. Again, the level of self-executing credits and the rules concerning their availability need not be different for CMRS carriers than for other competitive carriers. CMRS carriers should, however, be able to participate fully in any enforcement regime. Only in this way can the Commission's vision of "regulatory parity" for interconnection be fulfilled.

^{10/} As another example, AWS's interconnection agreement with SWBT requires each party to provide the other with monthly outage reports on the reliability of interconnection facilities. Interconnection Agreement by and between AT&T Wireless Services, Inc., and Southwestern Bell Telephone Company, Texas § 8.2.5 (April 16, 1997).

III. UNE PERFORMANCE REQUIREMENTS SHOULD APPLY TO CMRS CARRIERS TO THE EXTENT THEY OBTAIN UNBUNDLED NETWORK ELEMENTS

CMRS carriers are currently entitled to obtain UNEs pursuant to section 251(c)(3). A CMRS carrier is a “requesting telecommunications carrier” for purposes of section 251(c)(3), and the Commission has held that CMRS carriers are entitled to the benefits of section 251(c)(3).^{11/} For example, the Commission has held that CMRS carriers are entitled to obtain 911 databases as unbundled network elements under the Commission’s existing rules.^{12/} AWS’s interconnection agreements with incumbent LECs also provide that AWS is entitled to obtain UNEs, consistent with general rules on UNE access.^{13/} The Commission has also sought comment on CMRS access to UNEs, particularly interoffice transport, as part of its triennial review of UNE rules and regulations.^{14/}

To the extent CMRS carriers currently obtain UNEs,^{15/} or the Commission affirms and clarifies CMRS carriers’ rights to UNE access, CMRS carriers should be entitled to the same UNE performance standards and enforcement mechanisms that apply to UNE

^{11/} First Local Competition Order, 11 FCC Rcd at 15989-16016, ¶¶ 993, 1012, 1041.

^{12/} Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Second Memorandum Opinion and Order, 14 FCC Rcd 20850, 20889-90 (1999).

^{13/} See, e.g., Interconnection by and Between AT&T Wireless Services, Inc., and Southwestern Bell Telephone Company, Texas § 2.6 (April 16, 1997) (“SWBT will offer Network Elements to AWS on an unbundled basis on rates, terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the Federal Act and applicable State regulations or orders for the provision by AWS of a wireless telecommunications service.”); CMRS Interconnection Agreement between Pacific Bell and AT&T Wireless Services of California, Inc. § 5.1 (July 14, 1999) (“Where technically feasible, Pacific shall make unbundled network elements available to AWS in accordance with the Act and the FCC’s Rules (47 CFR § 51.307 *et. seq.*.”); Interconnection Agreement for Broadband Commercial Mobile Radio Service (CMRS) under Sections 251 and 252 of the Telecommunications Act of 1996 by and between Verizon New York Inc. and AT&T Wireless Services, Inc. for New York § 8.0 (Aug. 17, 2000) (Verizon shall provide “nondiscriminatory access to Network Elements on an unbundled basis” to the extent required by applicable law).

^{14/} See, e.g., Triennial Review ¶¶ 38, 61.

provisioning to CLECs. Section 251(c)(3)’s requirement that incumbent LECs provide nondiscriminatory access to UNEs applies by its terms to “any requesting telecommunications carrier.” There is no legal or policy justification to exclude CMRS carriers from performance plans designed to ensure such nondiscriminatory access.

CMRS carriers’ ability to obtain access to UNEs, especially vital interoffice transport facilities,^{16/} on nondiscriminatory terms and at cost-based rates will be critical in fulfilling the promise of inter-modal competition. Rather than being perceived merely as providers of a supplementary service to conventional wireline service, wireless competitors are increasingly being seen as viable competitors to incumbent LECs and long distance providers. Indeed, FCC Chairman Michael Powell has indicated that the “real competitive choices” that have been introduced through alternative platforms such as wireless “may be the best hope for residential [telephony] consumers,” an observation that is clearly supported by market evidence.^{17/} The Commission’s recent report reviewing the state of wireless/wireline competition cited evidence on the extent to which wireless service is increasingly being viewed as a competitive alternative to traditional wireline services.^{18/}

Ensuring that CMRS providers have access to necessary high quality transport facilities on a timely basis and at cost-based rates, along with policies that promote nondiscriminatory interconnection and sound spectrum allocation, are among the policies

^{15/} The key network elements that CMRS carriers may require as UNEs to supplement their own network include dedicated interoffice transport, signaling, and databases.

^{16/} CMRS carriers utilize these facilities to transport traffic between cell sites and centralized switching and control centers, and to carry traffic to the networks of other carriers. CMRS carrier reliance on incumbent LEC transport facilities is discussed extensively in the AWS/VoiceStream UNE Petition.

^{17/} See FCC Chairman Michael K. Powell, Digital Broadband Migration – Part II, Speech at FCC Press Conference 4-8 (Oct. 23, 2001).

necessary to continue the trend identified by the Commission and Chairman Powell, and will spur the development of wireless broadband services.^{19/} Such policies will help fulfill Chairman Powell's prediction that "[a] great deal of competition . . . particularly for residential consumers, will come from other platforms such as . . . wireless."^{20/}

IV. CONCLUSION

For the reasons set forth above, AWS respectfully requests the Commission to ensure the full and fair participation of CMRS carriers in any performance measurements, requirements or enforcement mechanisms adopted in this proceeding.

Respectfully Submitted,

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^{18/} Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Service, FCC 01-192, Sixth Report, 16 FCC Rcd 13350, 13381-82 (rel. July 17, 2001) ("Sixth Report").

^{19/} AWS has also filed comments in response to the Notice of Proposed Rulemaking on performance standards for special access services urging the Commission to ensure that CMRS carriers, which are major purchasers of special access, be included in any performance regime established for those services. AWS continues to believe that such facilities should be made available as UNEs. Incumbent LECs have thus far refused to convert special access services to UNEs. As long as AWS is forced to purchase interoffice transport as special access services, the incumbent LECs must at least be bound by performance requirements designed to ensure the reasonable and timely provision of those services.

^{20/} See FCC Chairman Michael K. Powell, Digital Broadband Migration – Part II, Speech at FCC Press Conference 4 (Oct. 23, 2001).

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CERTIFICATE OF SERVICE

I, Christopher Bjornson, do hereby certify that copies of the foregoing Comments of AT&T Wireless Services, Inc., were served on the following by either electronically or by hand delivery* this 22nd day of January, 2002.

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